

APPEAL NO. 030292  
FILED MARCH 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 10, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) had disability resulting from the compensable injury sustained on \_\_\_\_\_, from July 15 through October 23, 2002, and that the employer did not tender a bona fide offer of employment (BFOE) to the claimant. The appellant (carrier) appealed the hearing officer's determinations on both disputed issues. The claimant's response requests affirmance.

DECISION

Affirmed.

Regarding the BFOE issue, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6) sets out the requirements for a BFOE. The hearing officer found that the actual job duties assigned to the claimant on July 15, 2002, exceeded the restrictions set forth in the treating doctor's Work Status Report (TWCC-73), because the job required twisting, which the treating doctor specifically restricted the claimant from doing in the TWCC-73. Rule 129.6(b) provides in relevant part that an employer may offer an employee a modified duty position which has restricted duties which are within the employee's work abilities as determined by the employee's treating doctor (the rule goes on to provide for an offer of employment based on another doctor's assessment of the employee's work status in the absence of a TWCC-73 from the treating doctor). The treating doctor noted on July 16, 2002, that the twisting the claimant had to do in the modified job was not allowed by the TWCC-73 he issued, and on that date the treating doctor again took the claimant completely off work. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence on the BFOE issue, we conclude that the hearing officer's determination that the employer did not tender a BFOE to the claimant is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Although there is conflicting evidence on the disability issue, we conclude that the hearing officer's decision on that issue is supported by the claimant's testimony and by the reports of the treating doctor. The hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATE SERVICES COMPANY  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Terri Kay Oliver  
Appeals Judge